EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE
PUBLIC HEARING
December 1, 1999
Final Minutes

SUBCOMMITTEE MEMBERS PRESENT

Sen. Mack Cole, Chair
Rep. Kim Gillan
Rep. Gail Gutsche
Rep. Monica Lindeen
Rep. Dan McGee
Rep. Jim Shockley
Sen. Spook Stang
Rep. Bill Tash
Mr. Tom Ebzery
Ms. Julia Page
Mr. Jerry Sorensen

SUBCOMMITTEE MEMBERS EXCUSED

None

STAFF MEMBERS PRESENT

Krista Lee, EQC
Gordy Higgins, LJIAC
Judy Keintz, Secretary

VISITORS' LIST
Attachment #1

I CALL TO ORDER AND ROLL CALL

CHAIRMAN COLE called the meeting to order at 6:30 p.m. Roll call was noted; all members were present **(Attachment #2.)** The public was welcomed to the meeting and logistics of providing comment was given.

II PUBLIC COMMENT

Jeff Barber, Montana Environmental Information Center, remarked that there are two major issues that can be resolved by the study of eminent domain laws. The first issue is the public versus private use of eminent domain and the second issue relates to how the process is weighted. Is the process in balance or is it tilted towards either the condemnor or condemnee? He noted that pipelines less than 17 inches in diameter are not reviewed in a comprehensive manner. Public utilities originally were given the power of eminent domain because they were highly regulated. This is no longer the situation

today. The study should review whether or not the state is appropriately designating its authority to these private entities.

He raised a concern about the power of eminent domain being used for hard rock mining projects. This is wholly inappropriate. There is no other industry in this state that is so blatantly given eminent domain powers for their own benefit. Farmers are not allowed to condemn their neighbor's land because they want a larger wheat crop. The mining industry's ability to use eminent domain on behalf of the state should be removed.

He believes that the eminent domain laws are tilted in the favor of the condemnor. Once an entity decides to build a project, all the property owner has left to argue about is the price of the land that is being acquired. This has a number of consequences. The landowners feel helpless because they cannot say no to a project or move it to a portion of their property where it will be less intrusive on their operation. Condemnors should be more creative about their chosen route. Under current statutes, condemnors do not need to negotiate to any degree. They cannot offer an unusually low sum of money for the property they want to take but they know that eventually they will be able to obtain what they want. The landowner is left with no cards to play. They do have the threat of legal fees on their side if they want to go through the legal process.

One of the points behind REP. LINDEEN'S legislation last session was not allowing the condemnor to take the actual property until the legal process was completed. This would force the condemnor to negotiate because they would not be able to obtain the property for a period of years. There is some validity in this idea.

REP. SHOCKLEY questioned whether there were any specific examples of a 16 inch pipeline being used to avoid comprehensive review. **Mr. Barber** did not have specific examples but took note of comments made by the Montana Power Company at the Eminent Domain Subcommittee Meeting earlier in the day. It was interesting to him that a number of the pipelines they mentioned were 16 inch pipelines.

Mark Fix, Northern Plains Resource Council (NPRC), commented that the NPRC is committed to land stewardship and social justice principles which insure that Montana's

air, land, water, and unique quality of life are maintained and improved to ensure future generations a healthy, quality homeland. They believe that the urban, rural, and tribal communities of this region can prosper and thrive without destroying the last best place.

He requested that the study information be provided on the EQC internet site. They would also appreciate an e-mail address for commenting. He noted that the historical use document prepared by the Subcommittee reflect the condemnor's perspective. He requested that some landowner perspective be added to the document.

He further commented that in regard to reversion of property to the original landowner, there were several cases in Illinois where a railroad actually sold the landowner his abandoned right-of-way and it was only given as an easement. He offered to provide the Subcommittee copies of the cases. He also noted that it is his understanding that in regard to the Milwaukee Railroad matter in Montana, the land went to the highest bidder.

The eminent domain laws were created to condemn for public use but this is not true today. If the land was truly condemned for public use there would not be income derived from it and it would not be taxed. Entities that condemn today condemn for profit. They can turn around and sell the use of the land for more than they paid for it. An example would be the current situation with pipelines and railroads. The land can be acquired at a low cost and then the right to place a fiberoptic line on the property can be sold for a price higher than the original acquisition. The location of the right-of-way often interferes with the operation of the landowner. The condemnation proceeding does not consider whether the location of the right-of-way can be changed to accommodate the landowner, but only settles the monetary damages of the situation. If the location of the right-of-way was considered, many problems could be averted.

The right-of-way should only be given for one use. If the property is being used for more than one easement, the landowner should be paid for all the easements and not just the first easement. The original landowner should also be able to get his land back when the right-of-way is abandoned. Condemnation should not be used for fee title. When the land is given by fee title, the condemnation is a taking instead of condemning for use. Only easements are granted for state and federal land and private landowners should

be able to do the same. The eminent domain laws are being used to circumvent good faith negotiations. Condemnation should be used as a last resort only.

Barbara Ranf, US West, maintained that one of the challenges telecommunications companies face is that they need to deploy next generation telecommunications facilities. The challenge is to deploy these facilities in a geographically large and low density state like Montana and make that investment economically feasible. The current laws are working for US West and their customers. If the laws are changed, there may be roadblocks and barriers to their ability to bring those facilities into Montana.

The Subcommittee has used the term “multiple use” quite often. She is concerned about the definition being associated with the term. US West has very little exclusive right-of-way in Montana. Most of their right-of-way is multiple use. A utility corridor consists of a trench that contains electricity, telecommunications and perhaps natural gas. Landowners seem to like multiple use. They receive calls from customers asking that utilities be placed in the same trench. She requested that the Subcommittee pay special attention to defining terms and to make sure that the terms mean the same thing to everyone.

Don Allen, Western Environmental Trade Association, stressed the importance of the educational aspect of the eminent domain issue. There is very little real understanding of how eminent domain works. The law is set up so that the rights of everyone involved will be protected and everyone will have an opportunity to be well served by the present law. There are some legitimate concerns regarding communication problems that have occurred. Everyone needs to work very hard to improve this situation. He noted that it would be helpful to provide landowners with an educational brochure that would help them understand the law and their rights under the law. WETA has great expertise in this field and would like to help the process in terms of how to understand this important issue.

Lorna Karn, Montana Farm Bureau, commented that they are not convinced that the statutes need significant changes. Their main concern is that the process not be opened to allow everyone to use eminent domain powers. It should be limited to those uses that are truly public uses. They would like the Subcommittee to consider requiring public

bodies proposing acquisition of property for public purposes to send written notices at least 60 days prior to formal public hearing and also that public hearings be held before any land is optioned or purchased. Local communities and states could be required to be given prior knowledge of a pending utility permit before a proposed utility right-of-way is granted. Property owners should have the right to judicial review of the need and location of the proposed taking. The landowner should have at least five years, from the time of the original settlement, in which to negotiate claims for damages that may not have been confirmed at the time of the initial settlement.

CHAIRMAN COLE provided an e-mail address for any additional comments. That address is Klee@state.mt.us.

III ADJOURNMENT

There being no further business, the meeting adjourned at 7:15 p.m.

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SEN. COLE, Chairman